Office-Supreme Court, U.S.
FILED
FEB 19 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-411

IN THE

Supreme Court of the United States

October Term, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Petitioners,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondents.

BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS AND BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS.

LAW OFFICES OF
LAWRENCE B. TRYGSTAD,
By RICHARD J. SCHWAB,
1880 Century Park East,
Suite 517,
Los Angeles, Calif. 90067,
(213) 552-0500,
Attorneys for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

TABLE OF CONTENTS

	Page
Request for Permission to File Brief Amicus Curiae in Support of Respondents	1
Interest of Amicus Curiae	2
Brief Amicus Curiae in Support of Respondents	5
Interest of Amicus Curiae	5
Summary of Argument	6
Argument	7
Traditional Principles of Title VII Mandate That the Pregnancy Discrimination Act Be Interpreted to Equally Afford Protection to All Employees From the Risk of Pregnancy Related Disabilities	7
Conclusion	9
Appendix A. Findings of Fact and Conclusion of Law	App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Equal Employment Opportunities Commission v. Lockheed Missiles and Space Company, Inc. (9th Cir. 1982) 680 F.2d 1243	8
Frontiero v. Richardson, 411 U.S. 677 (1973)	8
Geduldig v. Aiello, 417 U.S. 484 (1974)	7
General Electric Company v. Gilbert, 429 U.S. 125 (1976)	7, 8
McDonald v. Santa Fe Transportation Co., 427 U.S. 273 (1976)	9
Reed v. Reed, 404 U.S. 71 (1971)	8
United States Steel Workers' of America, AFL-CIO-CLC v. Weber, et al., 443 U.S. 191 (1979)	8
Rule	
Rules of the Supreme Court of the United States, Rule 36.2	1
Statutes	
California Government Code, Sec. 3540 et seq.	1
United States Code, Title 42, Sec. 2000(k)	2

No. 82-411

IN THE

Supreme Court of the United States

October Term, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Petitioners,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondents.

REQUEST FOR PERMISSION TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS.

To the Honorable, Chief Justice and the Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 36.2 of the Rules of the Supreme Court of the United States, the United Teachers-Los Angeles, an unincorporated association, moves this Court for permission to file a Brief Amicus Curiae in the above entitled case in support of the Respondents. This motion is accompanied by the written consent of all parties to this case.

The United Teachers-Los Angeles, an unincorporated association, is the exclusive bargaining organization under the provisions of California Government Code Section 3540 *et seq.*, for all certificated (teaching) non-management employees, in the Los Angeles Unified School District. It represents approximately 30,000 certificated employees, 17,000 being members of the Collective Bargaining Organization.

The United Teachers-Los Angeles being familiar with the issues involved and the scope of their presentation, believes that there is a necessity for additional argument on the questions presented herein.

Interest of Amicus Curiae.

The United Teachers-Los Angeles, is involved in a legal action against the Los Angeles Unified School District which raises similar issues as in this instant case.

In *United Teachers-Los Angeles v. Board of Education of the City of Los Angeles, and the Los Angeles Unified School District, et al.*, Case No. 81-2121 LEW (GX), the United States District Court ruled that the Pregnancy Discrimination Act, 42 U.S.C. 2000(k) required an employer to include coverage of pregnancy related medical costs of spouses of employees, so long as the spouses were provided medical care coverage for non-pregnancy related conditions, and such coverage is at a level equivalent to the amount of coverage for non-pregnancy related conditions. (A copy of the United States District Court's Findings of Fact and Conclusions of Law are appended hereto as Appendix "A".

The Los Angeles Unified School District has appealed this decision favorable to the United Teachers-Los Angeles, to the United States Circuit Court of Appeals for the Ninth Circuit. Currently the Ninth Circuit Court of Appeals, after oral argument, has deferred submission of *United Teachers-Los Angeles v. Board of Education of the City of Los Angeles, et al.*, Case No. 82-5360, pending decision of this case.

Amicus Curiae believes that the Petitioner in the instant case is attempting to have the Pregnancy Discrimination Act interpreted so as to permit disparate employment benefits between women employees and men employees based solely upon their gender.

The United Teachers-Los Angeles, respectfully requests that this court grant it permission to file the attached Brief Amicus Curiae, copies of which have been served upon all parties to the case.

Dated: February 18, 1983.

Respectfully submitted,
LAW OFFICES OF
LAWRENCE B. TRYGSTAD,
By RICHARD J. SCHWAB,
Attorneys for United
Teachers-Los Angeles.

No. 82-411

IN THE

Supreme Court of the United States

October Term, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Petitioners,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondents.

BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS.

Interest of Amicus Curiae.

The United Teachers-Los Angeles (UTLA) has a particular and special interest in the above entitled litigation, in that it is involved in a similar legal action and is the exclusive representative organization for approximately 30,000 certificated (teaching) non-management employees in the Los Angeles Unified School District. The United Teachers-Los Angeles is greatly concerned that unless the Pregnancy Discrimination Act is construed to equally protect all employees regardless of sex, it will result in an inequity in the working place. Specifically, male employees, because of their gender, would receive a lesser compensation package because a male employee and his family would have to pay for pregnancy related costs while his female counterpart would have those expenses paid by insurance. Such, unequal treatment, it is urged violates traditional Title VII principles.

Summary of Argument.

Prior decisions of this court reflect that traditional Title VII principles would be violated if the Pregnancy Discrimination Act were interpreted to deny the same benefits to male employees as given to female employees.

An employer's health plan must provide an equal package of benefits to both male and female employees.

Congress, by promulgating the Pregnancy Discrimination Act, certainly has not intended to create a risk from which men and their spouses are not protected, while women and their spouses are covered.

To construe the Pregnancy Discrimination Act to protect only female employees would represent a distinct retreat from prior decisions prohibiting gender preferences.

In conclusion, once Congress had enacted the Pregnancy Discrimination Act recognizing pregnancy to be more than just a physical condition which could be excluded from insurance coverage, such protection must be granted equally.

ARGUMENT.

Traditional Principles of Title VII Mandate That the Pregnancy Discrimination Act Be Interpreted to Equally Afford Protection to All Employees From the Risk of Pregnancy Related Disabilities.

Traditional Title VII principles under this Court's decisions of *General Electric Company v. Gilbert*, 429 U.S. 125 (1976) which adopted the reasoning in *Geduldig v. Aiello*, 417 U.S. 484 (1974) would be violated if the Pregnancy Discrimination Act were interpreted not to include the same benefits to male employees. In both *Gilbert, supra,* and *Geduldig, supra,* this court held that failure to cover pregnancy benefits in a health insurance plan was not in violation of Title VII or Constitutional principles because neither male or female employees were covered.

However, it appears uncontroverted that the Pregnancy Discrimination Act was a response by the Congress to the *Gilbert* decision. Thereafter this amendment became an integral part of Title VII, because it mandated insurance coverage for "pregnancy, child birth, or related conditions" as an acknowledged risk protected under Title VII.

In determining the issue of whether or not the Pregnancy Discrimination Act should be extended to male employees and their spouses and female employees and their spouses equally, it must be evaluated under the traditional Title VII standards, namely,

> "Is there a risk from which men are protected and women are not, likewise is there a risk from which women are protected and men are not?" (See *General Electric Company v. Gilbert, supra,* at 135.

In other words, does an employer's health plan provide an equal package of benefits to both male employees and female employees? The Ninth Circuit in *Equal Employment*

Opportunities Commission v. Lockheed Missiles and Space Company, Inc. (9th Cir. 1982) 680 F.2d 1243, by a strained analysis of the Pregnancy Discrimination Act, found that Congress, by enacting this subsection purported to do no more than provide pregnancy protection only to women employees.

If this interpretation is correct, then there is the anomalous result which this Court specifically held in *Gilbert*, to be contrary to traditional Title VII principles. Specifically, Congress, by promulgating the Pregnancy Discrimination Act, would create a risk from which men and their spouses are not protected and from which women and their spouses are protected. The consequence is obvious. Under *Lockheed*, there is an uneven insurance package, which male employees, strictly because of their sex are excluded. Certainly, Congress would not have enacted legislation which supports such an interpretation.

What further makes the *Lockheed*, decision, suspect is that it does not directly deal with traditional Title VII concepts which are solidly ensconced within our judicial framework. Namely, the thrust of Title VII is the protections of the victims of traditional societal discrimination. Title VII protects *all* workers (See *United States Steel Workers of America, AFL-CIO-CLC v. Weber, et al.*, 443 U.S. 191 [1979]), and it would be incongruous with Title VII to construe the Pregnancy Discrimination Act to have the limited effect of protecting solely women employees. This would represent a distinct retreat from prior United States Supreme Court decisions prohibiting gender related preferences. (See (*Frontiero v. Richardson*, 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971).

Thus, while it would seem that one of the motivating factors behind enactment of the Pregnancy Discrimination Act was to protect women employees, this merely empha-

sizes the nature of the right being protected, and not a stated limitation. (See *McDonald v. Santa Fe Transportation Co.*, 427 U.S. 273 [1976]).

In conclusion, once Congress promulgated the Pregnancy Discrimination Act, recognizing pregnancy to be more than just a physical condition which could be excluded from insurance coverage, such protection, must be granted to both male and female employees alike without distinction.

Conclusion.

The concept of equal justice, although often obfuscated by a myriad of statutes and regulation, is in reality a very simple one. Title VII embodies that simplicity.

Thus, there is no reason or rational basis in this instant case upon which to allow a health insurance plan to contain a distinction based upon pregnancy that results in a less complete coverage for male employees with spouses, than their female counterparts.

Such a distinction creates not only an inequity, but also unfairness in the employment environment based purely and arbitrarily on the gender of the employee.

It is therefore respectfully urged that this Court not allow this unequal and potential acrimonious state of affairs to continue to exist. For the foregoing reasons the Circuit Court decision below should be affirmed in all respects.

Dated: February 18, 1983.

Respectfully submitted,

LAW OFFICES OF
LAWRENCE B. TRYGSTAD,
By RICHARD J. SCHWAB,
Attorneys for Amicus Curiae.

APPENDIX A.

Findings of Fact and Conclusion of Law.

United States District Court, Central District of California.

United Teachers-Los Angeles, Plaintiff, v. Board of Education of the City of Los Angeles and the Los Angeles Unified School District, Defendants. CV 81-2121 LEW (Gx).

Filed: March 3, 1982.

The cause came on for trial on December 14, 1981. Stipulation of Facts and exhibits for trial were received on November 25, 1981. Briefs were submitted on December 4, 1981 and reply briefs submitted December 9, 1981. The parties made their arguments on December 14, 1981. Law Offices of Lawrence B. Trygstad by Richard J. Schwab appeared for plaintiffs and John H. Larson, County Counsel by Steven J. Carnevale and Nina W. Phillips, Deputy County Counsels appeared for the Defendants.

The Court having considered the stipulated facts, exhibits, and briefs, and having heard the argument of counsel, enters the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Plaintiff, UNITED TEACHERS-LOS ANGELES (UTLA), is an employee organization organized and existing pursuant to the laws of the State of California, and is the exclusive representative of nearly all certificated (teaching) non-Management employees of the defendant LOS ANGELES UNIFIED SCHOOL DISTRICT (DISTRICT).

2. Defendant DISTRICT is and at all times relevant hereto was a legally constituted school district established under the laws of the State of California, and located in the

County of Los Angeles, California. Defendant, BOARD OF EDUCATION OF THE CITY OF LOS ANGELES, was and is the duly elected or appointed, and qualified governing board of the DISTRICT, operating pursuant to the laws of the State of California.

3. On or about May 2, 1980, Plaintiff, UTLA, filed a charge with the Equal Employment Opportunity Commission and the California Fair Employment Practices Commission concurrently, on behalf of all male members of UTLA alleging employment discrimination as alleged in the complaint herein on the part of Defendants herein. On or about May 9, 1980, Defendants were served with a Notice of Employment Discrimination by the Equal Employment Opportunity Commission to which they responded on December 5, 1980. Said charge was not acted upon by the Fair Employment Practices Commission and was referred to the Equal Employment Opportunity Commission on or about January 5, 1981. On or about March 9, 1981, the Equal Employment Opportunity Commission issued to Plaintiff Notification of Right to Sue. On or about April 23, 1981, Plaintiff instituted this lawsuit. It has exhausted all administrative remedies and this Court has jurisdiction pursuant to 42 USC 2000(e) et seq.

4. Under a collective bargaining agreement and under State and Federal law, the DISTRICT provides its certificated employees with certain health and medical insurance benefits. A choice of five different health plans is offered to employees and employees are free to choose from among these five plans. The DISTRICT submits a single composite premium to the various carriers regardless of the number of dependants per employee enrolled in the plan.

5. From on or about April 30, 1979, until the present, the five health plans have provided employees and their dependents a choice of the following health coverage:

(a) *Kaiser Foundation Health Plan, Inc.*
There is no charge to the employee or enrolled dependents for most medical procedures performed by Kaiser personnel in Kaiser facilities. With respect to pregnancy benefits, Kaiser charges one hundred and fifty dollars for members enrolled ten months or more and three hundred and fifty dollars for members enrolled less than ten months. The DISTRICT reimburses this amount to female employees only. All other disabilities are covered for employees and their dependents.

(b) *Ross-Loos Medical Group, Inc.*
There is generally no charge to the employee of enrolled dependents for care by Ross-Loos physicians at Ross-Loos approved facilities. There is no charge to employees for pregnancy care. For dependents there is a hundred dollar charge for pregnancy care. The subscriber is responsible for all hospital costs in excess of three hundred dollars resulting from dependent's pregnancy. Hospital costs for pregnancy complications are fully covered for employees and all enrolled dependents. All other disabilities are covered for employees and their dependents including spouses.

(c) Maxicare Health Plan.
There is no charge to the employee or enrolled dependents for most medical procedures. Maxicare charges a one hundred and fifty dollar flat fee for employees and dependents for pregnancy. The DISTRICT reimburses this amount to female employees. All other disabilities are covered for employees and their dependents including spouses.

(d) *Blue Cross of Southern California.*
The carrier has established a schedule of payments it will make for the various categories of medical treatment received by employees and their enrolled

dependents. Eighty percent of the expenses incurred in excess of these prescribed amounts are also paid by the carrier after the employee or dependents has paid the first one hundred dollars.

Pregnancy benefits are provided for all employees under the basic plan. For dependents, a one hundred dollar hospital fee is payable for normal delivery if the member has been covered by this plan since the inception of pregnancy and eighty percent of eligible hospital and professional expenses in excess of seven hundred and fifty dollars.

(e) *Blue Shield of California.*

The carrier has established a schedule of payments it will make for various types of medical treatment. The carrier has a list of member physicians who accept this amount as payment in full for services rendered. Eighty percent of the expenses incurred which are not covered by the basic schedule of payments are paid after the employee or dependent pays the first one hundred dollars. This same coverage applies to pregnancy related medical expenses of employees. It does not apply to pregnancy related medical treatment for dependents. For dependents, a one hundred dollar hospital fee is payable for normal delivery if the member has been covered by this plan since inception of the pregnancy and eighty percent of eligible hospital and professional expenses in excess of seven hundred and fifty dollars are paid.

6. That on April 30, 1979, the Board of Education adopted a proposal to amend the existing health care contract to provide coverage for maternity care for female employees and their spouses, but not for male employees and their spouses. As a result, only the male employee's family income must pay for pregnancy-related medical expenses

while under the same circumstances a female employee's family would not.

7. That following April 30, 1979 Board resolution the existing health contracts have never been amended to provide maternity coverage for male employees.

8. Defendants, although requested, have refused and unless permanently enjoined by this Court will continue to refuse to provide pregnancy and maternity benefits for the spouses of male employees.

9. Each and every Conclusion of Law herein after contained which may properly be a Finding of Fact is incorporated by reference as though fully set forth at this point.

Conclusions of Law

1. Plaintiff as the exclusive bargaining employee organization for nearly all certificated (teaching) non-management employees of the Defendant DISTRICT has standing to maintain the claims for injunctive relief under Section 701 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 (e) *et seq.* on behalf of its male members. *Social Services Union v. City of Santa Clara,* 609 F.2d 944 (9th Cir. 1979).

2. Plaintiff, by virtue of signing the collective bargaining agreement which excludes spouses of male employees from pregnancy-related insurance benefits, was not estopped nor deemed to have waived its right to assert a violation of Section 701 of Title VII on behalf of its male members. *Cf. Social Services Union, Supra.* (Union, although contract signatory, is adequate class representative of its members in employment discrimination suit challenging employment practices.)

3. Plaintiff does not have standing in its capacity as the exclusive bargaining organization in the DISTRICT to receive back damages on behalf of its male members. *Local*

194, Wholesale and Department Store Union v. Standard Brands, 540 F.2d 864 (7th Cir. 1976).

4. On October 28, 1978, Congress passed an amendment, subsection k, to Title VII, 42 U.S.C. §2000 (e). The Pregnancy Amendment, 42 U.S.C. 2000(e)k, [hereinafter PDA] states:

> The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and the women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work, and nothing in Section 703(h) shall be interpreted to permit otherwise.

5. The legislative history to the PDA does not concludemonstrate the intent of Congress with respect to the issue of employee benefits. In particular, the legislative history does not state whether or not Congress intended it to be illegal sex discrimination if a health plan for dependents of employees covers pregnancy related medical expenses less than other medical expenses. S.Rep No. 331, 95th Cong.2d Sess. 5-6 (1977) [hereinafter Senate Report]; 123 *Cong. Rec.* 29642 (1977) (Comments of Senator Bayh); 123 *Cong. Rec.* 29644 (1977) (Comments of Senators Hatch and Williams); 123 *Cong. Rec.* 29663 (1977) (Comments of Senator Cranston).

6. The Senate Report accompanying the Senate version of PDA states:

> Questions were raised in the committee's deliberations regarding how this bill would affect medical coverage for dependents of employees, as opposed to employees themselves. In this context, it must be

remembered that the basic purpose of the bill is to protect women employees; it does not alter the basic principles of title VII as regards sex discrimination. Rather, this legislation clarifies the definition of sex discrimination for title VII purposes. Therefore, the question in regard to dependents' benefits would be determined on the basis of existing title VII principles.

. . .

. . . [T]he question of whether an employer who does cover dependents, either with or without additional cost to the employee, may exclude conditions related to pregnancy from that coverage is a different matter. Presumably because plans which provide comprehensive medical coverage for spouses of women employees but not spouses of male employees are rare, we are not aware of any title VII litigation concerning such plans. It is certainly not this committee's desire to encourage the institution of such plans. If such plans should be instituted in the future, the question would remain whether, under title VII, the affected employees were discriminated against on the basis of their sex as regards the exte. of coverage for their dependents.

Senate Report, *Supra*, at 5-6.

7. The PDA was a Congressional response to the United States Supreme Court decision in *General Electric v. Gilbert*, 429 U.S. 125 (1976), in which the Supreme Court ruled that the exclusion of pregnancy related benefits from an employer's comprehensive disability plan did not violate Title VII. The legislative history to the PDA demonstrates that the Supreme Court in *General Electric* incorrectly interpreted Title VII; Congress intended to prohibit pregnancy related discrimination as sex discrimination under Title VII. Senate Report, *Supra*, at 2-4; H. Rep. 948, 95th Cong., 2d.Sess. 1-4 (1978), *reprinted in* [1978] U.S. Code Cong. & Ad. News 4750-52.

8. It would be unsupported by the legislative history behind, or the policy embodied in, the PDA and Title VII for this Court to rule that the PDA was intended to reverse *General Electric* only as to the pregnancy related expenses of working women themselves. As the Senate Report notes, the thrust of the PDA's changes to Title VII is to protect working women who become pregnant. Senate Report, *Supra*, at 5 ("[I]t must be remembered that the basic purpose of the bill is to protect women employees. . . ."). Similarly, the thrust of Title VII is the protection of the victims of traditional societal discrimination. Title VII protects *all* workers, however, *See, e.g., United Steelworkers of America, AFL-CIO-CLC v. Weber, et al.*, 443 U.S. 191 (1979), and it would be inconsistent with Title VII to construe the PDA to have the limited effect of protecting solely women employees. *Newport News Shipbuilding v. E.E.O.C.*, Nos. 81-1283 and 1307, (4th Cir., Jan. 7, 1982), *reported in* 27 F.E.P. Cases 1219 (BNA). *Contra E.E.O.C. v. Joslyn Manufacturing*, 524 F. Supp. 1141 (N.D. Ill. 1981).

9. It would be incorrect for this Court to conclude that the majority opinion in *General Electric* controls the present suit. The PDA was the Congressional rejection of the *General Electric* decision; the dissenting opinions in *General Electric* better explain the meaning of Title VII. To resolve the present controversy "on the basis of existing Title VII principles," Senate Report, *Supra*, at 5, therefore, this Court will look to the dissenting opinions in *General Electric*.

10. Contemporaneously or soon after Congress amended Title VII, to include the Pregnancy Discrimination Act, the Equal Employment Opportunities Commission [hereinafter E.E.O.C.], relying upon the Congressional Record and comments from the public and affected Federal Agencies, issued final interpretative guidelines in the form of questions

and answers establishing and clarifying the intent of Congress on the issue of employee benefits. The interpretative guidelines, found at 29 C.F.R. Section 1604.10 (1981), questions and answers 21 and 22 state as follows:

> 21.-Q. Must an employer provide health insurance for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependants of all employees?
>
> A. Where an employer provides no coverage for dependants, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the expenses of spouse, of male employees, including those arising from pregnancy-related conditions. But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependants as long as it excludes the pregnancy-related conditions of such non-spouse dependants of male and female employees equally.
>
> 22.-Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical expenses of the spouses of male employees as it provides for its female employees?
>
> A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides for the medical conditions of the spouses of its employees, the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100% of reasonable and customary expenses sustained for a medical condition, but only covers dependant spouses

for 50% of reasonable and customary coverage expenses for the medical conditions, the pregnancy-related expenses of the male employee's spouse must be covered at the 50% level.

11. The E.E.O.C. guidelines above referenced are entitled to great deference in that it is the Administrative Agency responsible for interpreting and implementing Title VII. *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

12. The language of the PDA indicates that any distinction in employee spousal benefits based on pregnancy constitutes illegal sex discrimination. *Newport News Shipbuilding, Supra.*

13. Title VII embodies a strong national policy against discrimination in employment on the basis of sex. This Court concludes that distinctions among employees which are based upon pregnancy related criteria undercut that strong national policy. As the Senate Report, *Supra*, at 3, states, a contrary decision, such as that reached by the majority in *General Electric* would "threaten to undermine the central purposes of the sex discrimination prohibitions of title VII."

14. Defendants have not established nor asserted that the disparate insurance coverage for pregnancy-related benefits between male and female employees in the DISTRICT is either a Bona Fide Occupational Qualification or a business necessity.

15. Under Article VII, Section 1.0 of the 1980-1982 Collective Bargaining Agreement by and between Plaintiff and Defendants, the Defendants are expressly prohibited from discriminating against any employee pursuant to applicable Federal and State laws because of sex.

16. For the foregoing reasons, this Court holds that under the facts of this case, the insurance programs currently

provided by the defendants violate Title VII and the E.E.O.C. guidelines promulgated thereunder because they discriminate against male employees as illustrated in the E.E.O.C. guidelines.

17. Plaintiff, except as stated in Conclusion of Law 3, is entitled to the relief prayed for in its complaint including, but not limited to, the costs and disbursements of this action and reasonable attorneys' fees pursuant to 42 U.S.C. § 2000 (e)5(k). *Burns v. Southern Pacific*, 589 F.2d 403, 408 (9th Cir. 1978).

18. Each and every finding of fact which properly may be deemed a conclusion of law is herein incorporated by reference as though fully set forth.

19. That Judgement is rendered in favor of Plaintiff and each of them.

Dated: Mar. 2, 1982.

/s/ Laughlin E. Waters,
Laughlin E. Waters
United States District Judge